(19,047.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

vs.

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 13, 1904.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jean Francois Moisan and William Denman, Esq., his attorney, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the district court of the United States, for the northern district of California, wherein Henry Dallemagne, consul-general of the Republic of France, resident at San Francisco, acting for and on behalf of the Republic of France, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 24" day of July, A. D. 1903.

JAS. H. BEATTY,
United States District Judge.

Service and delivery of a true copy of the above citation is hereby admitted this 24th day of July, A. D. 1903.

WILLIAM DENMAN,
Attorney for Appellee.

2 [Endorsed:] No. 12977. District court of the U. S., northern district of California. Henry Dallemagne, appellant, *vs.* Jean François Moisan, appellee. Citation. Filed, Jul- 25 1903. George E. Morse, clerk, by John Fouga, deputy clerk. Andros & Hengstler, attorneys for appellant.

3 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for Writ of *Habeas Corpus.*

Complaint for Writ of Habeas Corpus.

Your complainant respectfully shows:

I.

That he is Jean Francois Moisan, a citizen of France, more than twenty-one years of age, at present residing in and forcibly confined in the city and county of San Francisco, State of California, in the city prison thereof.

II.

That on or about the 1st day of May, 1903, one Henry Dallemagne, a consul general for France, residing in the city and county of San Francisco, State of California, did make his requisition in writing for the arrest and detention of your complainant, directed to and delivered to George W. Wittman, the chief of police of the said city and county, in form and fact as follows:

"To George W. Wittman, Esq., chief of police, hall of Justice, San Francisco, California.

4 DEAR SIR: Jean Francois Moisan, a member of the crew of the French bark Jaques, whereof Louis M. Michel is master, having conducted himself in an improper and insubordinate manner on board, I have the honor, in pursuance of the provisions of the terms of article 8 of the consular convention of 1853, between France and the United States, to request that you will please cause the said Jean Francois Moisan to be arrested, brought on shore and imprisoned until I find an opportunity of sending him away. An official abstract from the crew list is hereby annexed. The expenses of such arrest and detention to be paid by me.

I have the honor to be, dear sir, very truly yours,

[SEAL.] HENRY DALLEMAGNE,
French Consul General."

III.

That accompanying said requisition, the said consul general did serve upon and deliver to the said George W. Wittman an official abstract from the crew list showing your complainant to have been a member of the crew of the said French bark "Jacques."

IV.

That thereafter and on or about the 1st day of May, 1903, and pursuant to the said request in said requisition contained and purporting to act upon the alleged authority of the said requisition, the said George W. Wittman, as said chief of police, with force and against the will of your complainant, arrested him, the said complainant, and forcibly carried him to the city prison of the said city and county, and ever since has caused him to be confined in the said city prison against his, your complainant's, will, and that he still confines complainant in the said prison; claiming at all times herein mentioned to act pursuant to the alleged authority conferred upon him by the said requisition of the said French con-
5 sul general.

V.

That complainant is informed and believes and upon his information and belief alleges, that the said French bark "Jacques" is

no longer in the port of San Francisco, nor in the vicinity thereof, but that it has a long time since departed from the said port for France.

VI.

That the said imprisonment is illegal in this, that the state of facts, as hereinbefore set forth, does not confer jurisdiction upon the said consul and the said George W. Wittman, or either of them, to restrain complainant from his liberty and to imprison him as herein alleged.

Wherefore, complainant prays that a writ of *habeas corpus* may be granted, directed to the said George W. Wittman, commanding him to have the body of Jean Francois Moisan before your honor, at the time and place therein specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of Jean Francois Moisan's detention, and said writ; and that he may be restored to his liberty.

JEAN FRANCOIS MOISAN,
Complainant.

WILLIAM DENMAN,
Attorney for Complainant.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Jean Francois Moisan, being first duly sworn, deposes and says that he is the complainant in the above-entitled matter; that he has heard read the foregoing complaint for writ of *habeas corpus*, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

6

JEAN FRANCOIS MOISAN.

Subscribed and sworn to before me, this 26th day of May, 1903.

OLIVER DIBBLE,
[SEAL.] *Notary Public in and for said City and County of San Francisco, State of California.*

Endorsed: Let the writ issue, returnable May 28, 1903, at 10 a. m. John J. De Haven, judge. Filed May 27 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

7 In the District Court of the United States, Northern District of California.

In the Matter of JOHN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

The President of the United States of America to Geo. W. Witman, chief of police, hall of justice, city and county of San Francisco, or whoever may have the custody or control of said John Francois Moisan, Greeting:

You are hereby commanded, that you have the body of the above-named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable John J. De Haven, judge of the district court of the United States for the northern district of California, at the court-room of said court in the city and county of San Francisco, California, on the 28th day of May, 1903, at 10 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable John J. De Haven, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 27th day of May, A. D. 1903.

[SEAL.]

GEO. E. MORSE,
Clerk of said District Court,
By J. S. MANLEY,
Deputy Clerk.

Endorsed: Issued May 27, 1903. Returnable May 28, 1903. Filed on return this May 27 1903 10 a. m. Geo. E. Morse, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

8

Duplicate.

Abstract from the roll, crew list of the French bark "Jacques," Captain Louis M. Michel, now lying in the harbor of San Francisco.

Names.	Capacity on board.	Observations.
Jean Francois Moisan	Sailor	Boat lying at Beale Street wharf.

Age, 25 years; height, ——.
Hair, ——; eyes, ——.
Nose, ——; mouth, ——.
Chin, ——; visage, ——.
Complexion, ——.

The undersigned, consul of France in San Francisco, certifies that the above is a true and authentic abstract translated into English, from the ship's roll of the French bark "Jacques," Captain Louis M. Michel, now lying in the harbor of San Francisco; and that said abstract is made according to the VIII article of the consular convention between the United States and France, of the 23d February, 1853, to be used for all purposes and to all ends, in virtue of said treaty, as well, and with as much force and authenticity, as if the ship's roll itself was exhibited.

In witness thereof, I have hereto set my signature and official consular seal.

San Francisco, May 1st, 1903.

[SEAL.] HENRY DALLEMAGNE,
The Consul General of France.

9 Consulat de France, San Francisco.

SAN FRANCISCO, 1*st Mai*, 1903.

George W. Wittman, chief of police, hall of justice, San Francisco, Cala.

DEAR SIR: Jean Francois Moisan, a member of the crew of the French bark "Jacques" whereof Louis M. Mickel *a* master, having conducted himself in an improper and insubordinate manner on board. I have the honor in pursuance of the provisions of the terms of art. 8, of the consular convention of 1853, between France and the United States, to request that you will please cause the said J. F. Moisan to be arrested, brought on shore and imprisoned until I find an opportunity of sending him away. An official abstract from the crew list is hereto annexed. The expense of such arrest and detention to be paid by me. I have the honor to be, dear sir,

Very truly yours, HENRY DALLEMAGNE,
French Consul-General.

10 In the District Court of the United States, Northern District of California.

Ex Parte JOHN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss.*:

I, George W. Wittman, chief of police of the city and county of San Francisco, State of California, acting in obedience to the writ of *habeas corpus* issued herein by said honorable court do here and now produce the body of the said John Francois Moisan, and respectfully return and show that he is in my custody by virtue of

the request from Henry Dallemagne, French consul general, and an abstract from the roll of the French bark "Jacques" true copies of which said request and abstract from roll are hereto attached and made a part of this my return to said writ of *habeas corpus*.

GEO. W. WITTMAN,
Chief of Police.

San Francisco, California, May 28th, 1903.

11 In the District Court of the United States, Northern District of California.

In the Matter of JEAN FRANCOIS MOISAN, on *Habeas Corpus*. No. 12977.

The President of the United States of America to Geo. W. Witman, chief of police, hall of justice, city and county of San Francisco, or whoever may have the custody or control of said Jean Francois Moisan, Greeting:

You are hereby commanded, that you have the body of the above named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable John J. De Haven, judge of the district court of the United States for the northern district of California, at the court-room of said court in the city and county of San Francisco, California, on the 28th day of May, 1903, at 10 o'clock a. m., to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness, the Honorable John J. De Haven, judge of the said district court, and the seal thereof, at San Francisco, in said district, on the 27th day of May, A. D. 1903.

[SEAL.]

GEORGE E. MORSE,
Clerk of said District Court,
By J. S. MANLEY,
Deputy Clerk.

12 I, George E. Morse, clerk of the district court of the United States, for the northern district of California, do hereby certify the foregoing to be a copy of the writ of *habeas corpus*, issued in the within entitled matter.

Attest my hand and seal of said district court this 27th of May, A. D. 1903.

[SEAL.]

GEO. E. MORSE, *Clerk,*
By J. S. MANLEY,
Deputy Clerk.

I hereby certify, that on the 27th day of May, 1903, I received the writ of which the within is a copy, and that on the 27 day of May, 1903, at San Francisco, in this district, I personally served the said writ, by delivering to and leaving the same with chief clerk of Geo. W. Whitman, chief of police of San Francisco, California.

Dated, San Francisco, Cal. May 27, 1903.

JOHN H. SHINE,
U. S. Marshal,
By WILLIAM P. GAMBLE,
Office Deputy Marshal.

Endorsed: Issued May 27–1903. Returnable May 28–1903. Filed on return this 28th day of May, 1903, 10 a. m. Geo. E. Morse, clerk of said U. S. district court. By J. S. Manley, deputy clerk.

13 At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city and county of San Francisco, on Thursday the 28th day of May, A. D. 1903.

Present: The Honorable John J. De Haven, judge.

In the Matter of JEAN FRANCOIS MOISAN, on *Habeas Corpus.* No. 12977.

In this matter, the chief of police, George W. Whitman, made due return to the writ of *habeas corpus* issued herein and produced the body of Jean Francois Moisan in open court. The matter thereupon came on regularly for hearing, William Denman appearing as attorney for the petitioner; Edward J. Banning, assistant U. S. attorney, on behalf of the respondent George W. Whitman, chief of police, and L. T. Hengstler on behalf of Henry Dallemagne, the consul-general of France at San Francisco. On motion of Mr. Denman, who called Jean Francois Moisan, and who was sworn and examined as a witness in that regard, it is ordered that this matter may be prosecuted without expense to the petitioner. Mr. Hengstler filed exceptions to the jurisdiction. The matter was thereupon argued by Mr. Denman and Mr. Hengstler, and submitted to the court for decision. After due consideration had thereon, and it appearing to the court that the bark Jacques, of the crew of which said Jean Francois Moisan was a member, has departed the port of San Francisco and is no longer in said port,—it is ordered that the said Jean Francois Moisan be, and he is hereby, discharged from the custody whence produced, and that he go hence without day.

14 On motion of Mr. Hengstler it is ordered that the execution of the judgment of discharge herein be, and the same is hereby, stayed for the term of one day.

15 (*Exceptions by French Consul.*)

In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus.*

Henry Dallemagne, consul general of France, resident at San Francisco, intervening in the above entitled matter, respectfully submits:

That the complainant in this case was arrested at intervenor's request, under and by virtue of article VIII of the consular convention between the United States and France, concluded on the 23rd day of February, A. D. 1853, and proclaimed by the President of the United States on the 12th day of August, A. D. 1853, and now in full force and effect.

That a difference has arisen, in the port of San Francisco, between the captain of the French bark "Jacques" and the complainant in this matter, a member of the crew of said bark, and that said complainant's arrest was made by virtue of intervenor's exclusive cognizance of such differences, under said article of said treaty.

That intervenor hereby respectfully excepts to the jurisdiction of the honorable court to issue a writ of *habeas corpus* in this matter, and to the power of this court to take cognizance of this matter.

Respectfully submitted,

ANDROS & HENGSTLER,
Att'ys for Henry Dallemagne, Consul General of France.

Endorsed: Filed May 28th, 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

16 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus.* No. 12977.

Petition for Appeal.

Henry Dallemagne, consul-general of the Republic of France, acting for and on behalf of the Republic of France, resident at San Francisco, conceiving that he is aggrieved by the order and judgment, entered on the 28th day of May, 1903, in the above-entitled proceeding, does hereby appeal from the said order to the Supreme Court of the United States, and prays that his appeal may be allowed, and that a transcript of the record of proceedings and papers

upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, San Francisco, the 28th day of May, A. D. 1903.

ANDROS & HENGSTLER,
Attorneys for the Consul-General of France.

17 UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

Louis T. Hengstler, being duly sworn, deposes and says that he is one of the counsel for the petitioner above mentioned, and as such has had personal charge of the proceeding in the district court of the United States, in and for the northern district of California; that he knows the contents of the foregoing petition; that the facts therein stated are true, and that this appeal is not taken for delay.

LOUIS T. HENGSTLER.

Subscribed and sworn to before me, this 28th day of May, A. D. 1903.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

Endorsed: Filed,—May 28 1903. Geo. E. Morse, clerk, by J. S. Manley, deputy clerk.

18 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*. No. 12977.

Assignments of Error.

And now, to-wit: on the 28th day of May, A. D. 1903, the appellant files his assignments of error in the above-entitled cause, and assigns for error therein as follows, to-wit:

1. The court erred in its construction of article VIII. of the treaty between the United States and France, of 1853, in holding that it had jurisdiction of the application herein.
2. The court erred in granting the writ of *habeas corpus*.
3. The court erred in holding that the application must be granted for the reason that the vessel to which Jean Francois Moisan belonged as a member of the crew, had left the port of San Francisco.
4. The court erred in not remanding the prisoner to custody.
5. The court erred in discharging the prisoner from custody.

Dated the 28th of May, 1903.

ANDROS & HENGSTLER,
Attorneys for the Consul General of France.

Endorsed: Filed May 28, 1903 Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

19 In the District Court of the United States for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*. No. 12977.

Order Allowing Appeal, etc.

And now, to-wit: on May 28th, 1903, it is ordered that the appeal be allowed as prayed for. And it is further ordered that said petitioner, Jean Francois Moisan, may, at any time pending said appeal, be enlarged upon executing a recognizance, with sureties in the sum of fifty dollars, to the satisfaction of the clerk of this court, for his appearance to answer the judgment of the supreme court, and upon failure to give bail, to remain in the custody of the United States marshal for the northern district of California.

JOHN J. DE HAVEN,
District Judge.

Endorsed: Filed May 28, 1903. Geo. E. Morse, clerk. By J. S. Manley, deputy clerk.

20 In the District Court of the United States in and for the Northern District of California.

In the Matter of the Application of JEAN FRANCOIS MOISAN for a Writ of *Habeas Corpus*.

Recognizance for Appearance.

UNITED STATES OF AMERICA, }
Northern District of California, } *ss:*

Be it remembered that on this 28th day of May, 1903, before me, J. S. Manley, United States commissioner for the northern district of California, duly appointed by the district court of the United States for the northern district of California to take acknowledgments of bail and affidavits, &c., pursuant to the acts of Congress in that behalf, personally appeared Jean Francois Moisan, as principal, and A. Furuseth and James A. Craig, as sureties, and jointly and severally acknowledged themselves to owe and to be indebted to the United States of America, in the sum of fifty (50) dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the United States, if de-

fault be made in the conditions following, the condition of this recognizance is such, that whereas, lately at a district court of the United States for the northern district of California, in a matter
21 depending in said court in which the said Jean Francois Moisan was the petitioner on *habeas corpus*, a judgment was rendered discharging the said Jean Francois Moisan from custody, and the intervenor Henry Dallemagne, consul-general of France at San Francisco, obtained from said court an appeal to reverse the judgment in the aforesaid matter,—

And whereas, the said Jean Francois Moisan has been required to give a recognizance with sureties in the sum of fifty (50) dollars, to answer any judgment of the said district court of the United States for the northern district of California.

Now, therefore, if the said Jean Francois Moisan shall personally appear at the district court of the United States for the northern district of California to be holden at the court-room of said court, in the city and county of San Francisco, State of California whenever he may be required to render himself in execution of any judgment that may be rendered, then this recognizance shall be void, otherwise to remain in full effect and virtue.

JEAN FRANCOIS MOISAN.
A. FURUSETH.
JAMES A. CRAIG.

Taken and acknowledged before me the day and year as above written.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

A. Furuseth and James A. Craig, being duly sworn, each for himself, deposes and says that he is a householder in said district, and is worth the sum of one hundred (100) dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.
22

A. FURUSETH.
JAMES A. CRAIG.

Subscribed and sworn to before me, this 28th day of May, A. D. 1903.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

The form of the foregoing bond and the sufficiency of the sureties thereto is hereby approved.

GEO. E. MORSE,
Clerk United States District Court, Northern District of California.

Endorsed: Filed, May 29 1903. Geo. E. Morse, clerk.

23 I, George E. Morse, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing pages, numbered from 1 to 22, inclusive, to be a full, true and correct copy of the record and proceedings in the matter of Jean Francois Moisan, on *habeas corpus*, No. 12977, and that the same constitute the transcript of the record herein upon appeal to the United States Supreme Court.

I further certify that the cost of the foregoing transcript of record is $10.50, and that said amount was paid by L. T. Hengstler, attorney for the appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this 27th day of July, A. D. 1903.

[Seal of the U. S. District Court, Northern Dist. of California.]

GEO. E. MORSE, *Clerk*,
By JOHN FOUGA, *Deputy Clerk*.

Endorsed on cover: File No. 19,047. N. California D. C. U. S. Term No. 104. Henry Dallemagne, consul-general of the Republic of France, appellant, *vs.* Jean Francois Moisan. Filed August 14, 1903.